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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,060	01/11/2002	John S. Murphy	RYL 2 0817	6495
7590	11/24/2003		EXAMINER	
Jay F. Moldovanyi, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 11/24/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/044,060	MURPHY ET AL.
	Examiner Terrence R. Till	Art Unit 1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 8-13,27-31 and 35-43 is/are allowed.
- 6) Claim(s) 1,2,4-7,14-16,18-21,23,25,32 and 33 is/are rejected.
- 7) Claim(s) 3,17,22,24,26 and 34 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 January 2002 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.

- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

*Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the conversion port in the rear wall of the dirt cup (claim 38) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. With respect to claim 18, which depends upon 14, applicant recites "further comprising a secondary filter...". However, applicant has not recited a first filter in claim 14. This makes claim 18 confusing.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 4-7, 19, 20, 23 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Stephens et al.

The applied reference has a common inventor (Kalman) and presumably assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

7. The patent to Stephens et al. disclose an upright vacuum cleaner, comprising: a floor nozzle 2 having a suction inlet 6; a handle 20, a housing 16,24 having a first portion connected to said floor nozzle 24 and a second portion 16 connected to said handle, the housing defining a cavity and at least one chamber 22 a dirt cup assembly 24 releasably connected to said housing and at least partially received by said cavity, said dirt cup assembly defining a cyclonic airflow chamber and including a wall 38a,b an inlet duct 46,48 defined on said dirt cup assembly wall; a filter assembly 34 removably positioned in said dirt cup assembly; and a motor assembly disposed in said at least one chamber defined by said housing. The upright vacuum cleaner further comprises a filter cage 82 and a filter media 70 mounted on said filter cage. Stephens et al. further disclose the filter assembly is concentrically positioned in said dirt cup assembly, the

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dirt cup assembly comprises a support 62 connected to a base wall, and wherein said filter assembly is mounted on said support, a latch assembly (column 3, lines 5-15) for selectively securing said dirt cup assembly to said housing and a ducting system located within said floor nozzle and said housing for fluidically connecting said suction inlet to said dirt cup inlet duct, whereby air is drawn in through said suction inlet, drawn through a pivot tube 12 in said floor nozzle, a conduit 64 in said housing, through said dirt cup inlet duct and cyclonically filtered in said dirt cup and expelled through an opening in a base of said dirt cup. With respect to claim 19, Stephens et al. disclose all the recited subject matter including an inlet duct located on the base, a filter support element 62 mounted on the base and the filter 70,82 mounted on the filter support element, wherein the filter support element is an integrally molded component of said dirt cup base, wherein the dirt cup base defines an exhaust duct, and wherein said filter support element surrounds said exhaust duct and extends into said cavity, wherein the filter comprises a filter cage 82 and a bottom support 74 connected to a distal end of said filter cage, and wherein said bottom support cooperates with said filter support element to selectively mount said filter to said dirt cup assembly. With respect to claim 32, Stephens et al. disclose all the recited subject matter including the dirt cup assembly including at least one exterior wall 38a,b,d and defining a second cavity 50, an inlet duct 46,48 located on said dirt cup assembly exterior wall in fluid communication with said air conduit when said dirt cup assembly is received in said first cavity, whereby air is drawn in through said suction inlet, through said air conduit, through said inlet duct and into said second cavity; and said dirt cup assembly includes a base wall 44 that defines an exhaust port 62a, through which the air in the second cavity exits the dirt cup. Stephens also discloses a motor assembly disposed in said at least one chamber defined by said housing, and

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wherein said dirt cup assembly and said at least one chamber are in fluid communication such that air exiting said dirt cup assembly through said base wall exhaust port passes into said at least one chamber.

8. Claims 1, 2, 4, 6, 14-16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Sepke et al.

9. The patent to Sepke et al. disclose an upright vacuum cleaner, comprising: a floor nozzle 101 having a suction inlet 105; a handle 104, a housing 102 having a first portion connected to said floor nozzle and a second portion connected to said handle, the housing defining a cavity and at least one chamber, a dirt cup assembly 106 releasably connected to said housing and at least partially received by said cavity, said dirt cup assembly defining a cyclonic airflow chamber and including an upper wall 116 an inlet duct 130,131 defined on said dirt cup assembly upper wall; a filter assembly 114 removably positioned in said did cup assembly; and a motor assembly disposed in said at least one chamber defined by said housing. The upright vacuum cleaner further comprises a filter cage 126 and a filter media 129 mounted on said filter cage. Sepke et al. further disclose the filter assembly is concentrically positioned in said dirt cup assembly. With respect to claim 14, Sepke et al. disclose a vacuum cleaner, comprising all the recited subject matter including the dirt cup 106 is movable in relation to said housing from a use position to an emptying position, a dirt cup handle 112 connected to said dirt cup assembly and spaced from said main handle104, wherein the stick vacuum cleaner may be lifted by the dirt cup handle when the dirt cup is in the use position; and a motor assembly disposed in said at least one chamber defined by said housing. Sepke et al. further disclose the dirt cup including a

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tangential inlet 130,131 so that said dirt cup defines a cyclonic airflow chamber and further comprising a removable filter assembly 114 located in said cyclonic airflow chamber.

10. Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by UK patent to Kilstrom.

11. Kilstrom discloses a vacuum cleaner, comprising a floor nozzle 10 having a suction inlet 11; a main handle 24 a housing 14 having a first portion connected to said floor nozzle and a second portion connected to said main handle, the housing defining a cavity and at least one chamber 15, a dirt cup releasably 25 connected to said housing and at least partially received by said cavity, wherein the dirt cup is movable in relation to said housing from a use position to an emptying position and a dirt cup handle 27 connected to said dirt cup assembly and spaced from said main handle, wherein the stick vacuum cleaner may be lifted by the dirt cup handle when the dirt cup is in the use position and a motor assembly 20,21 disposed in said at least one chamber defined by said housing. Kilstrom also discloses the dirt cup includes a tangential inlet 32 so that said dirt cup defines a cyclonic airflow chamber.

*Claim Rejections - 35 USC § 103*

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens et al.

16. The patent to Stephens et al. discloses the claimed invention except for the filter support element being an independent component connected to the dirt cup base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the filter support element 62 to be an independent component connected to the dirt cup base, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

***Allowable Subject Matter***

17. Claims 3, 17, 22, 24, 26 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claim 18, as best understood, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

19. Claims 8-13, 27-31 and 35-43 are allowed.

20. The following is an examiner's statement of reasons for allowance: With respect to claim 8, the prior art does not disclose nor render obvious the claimed combination of a stick vacuum cleaner, comprising a floor nozzle having a suction inlet, a housing connected to said floor nozzle, the housing having a front panel and a rear panel, said housing including a cavity and at least one chamber spaced therefrom; said front panel of said housing defining a first aperture that opens into said cavity, said rear panel of said housing defining a second aperture that opens into said cavity, wherein said second aperture is smaller than said first aperture; a dirt cup releasably mounted to said housing and at least partially received in said cavity, wherein the dirt cup extends into said first aperture and into said second aperture when mounted on said housing, said dirt cup being removable from said housing in a frontal direction; and a motor assembly disposed in said at least one chamber defined by said housing. With respect to claim 27, the prior art does not disclose nor render obvious the claimed combination of a stick vacuum cleaner, comprising a floor nozzle having a suction inlet, a housing connected to said floor nozzle, the housing defining a cavity and at least one chamber, a dirt cup assembly releasably connected to said housing and

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at least partially received by said housing cavity, wherein said dirt cup assembly includes a front wall, a rear wall, a first side wall, a second side wall and a base wall, said walls being interconnected to define a dirt cup cavity; a filter assembly mounted in said dirt cup cavity, said filter assembly including a top wall, a gasket extending away from an upper surface of said filter assembly top wall, a skirt extending away from a lower surface of said filter assembly top wall in a manner offset from said gasket, wherein at least one of said walls of said dirt cup assembly includes an upper portion having a projection, and wherein said filter assembly top wall, said gasket and said skirt cooperate with said dirt cup wall projection to form a labyrinth seal; and a motor assembly disposed in said at least one chamber defined by said housing. With respect to claim 35, the prior art does not disclose nor render obvious the claimed combination of an upright vacuum cleaner, comprising a housing comprising a floor nozzle and defining a first cavity and at least one chamber, a dirt cup releasably connected to said housing and at least partially received in said first cavity, said dirt cup defining a second cavity, said dirt cup including a conversion port for above-the-floor cleaning; and a motor assembly disposed in said at least one chamber defined by said housing.

21. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Conclusion*

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Wright et al., McCormick, Yonkers, Park et al., Yung, McGill et al.,

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Oh, Dyson et al., Ohta et al. and Deng show the current state of the art in vacuums with removable dirt receptacles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to T. Till whose telephone number is (703) 308-1592.

Any inquiry of a general nature concerning the status of this application should be directed to the receptionist of Technology Center 2 whose telephone number is (703) 308-0661.

Any responses made by facsimile should be addressed to T. Till at (703) 872-9310.

In mid-December of 2003, the examiner will be moving locations and changing phone numbers. The following information will apply:

New phone number: (571) 272-1280

  
TERRENCE R. TILL  
PRIMARY EXAMINER  
ART UNIT 1744

trt

November 20, 2003